
U.S. Department of Labor
Office of Administrative Law Judges
1111 20th Street, N.W.
Washington, D.C. 20036

Date Issued: Feb. 28, 1990
Case No.: 90-ERA-11

In the Matter of

Paul M. Blanch, Claimant

v.

Northeast Nuclear Energy Company, Employer

DECISION RECOMMENDING ACCEPTANCE OF SETTLEMENT

This matter arises under the provisions of the Energy Reorganization Act of 1974, 42 U.S.C. 5851 (the Act), and the regulations governing procedures for the handling of discrimination complaints under Federal employee protection statutes found at 29 CFR Part 24.

STATEMENT OF PROCEEDINGS

Complainant, Paul M. Blanch, filed a complaint with the Secretary of Labor alleging adverse retaliatory actions against him by the Respondent, Northeast Nuclear Energy Company, after he raised concerns for the safe operation of Respondent's nuclear facility.

An investigation was conducted by the Department of Labor, Employment Standards Administration. The Department found that Blanch was a protected employee engaged in a protected activity

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within the scope of the Act and that discrimination was a factor in the actions which comprise his complaint.

The Department recommended: that the Respondent cease harrassing Mr. Blanch; and, to clear him for subcontract work with companies outside Respondent's operations.

Respondent rejected the recommendations, and filed a timely request for hearing on the charges with the Chief Administrative Law Judge, U. S. Department of Labor. The matter was promptly set down for hearing, but postponed on request of the attorneys to allow more time to prepare for trial. In subsequent pretrial discussions of the issues with the attorneys, they advised that the differences between the parties had been resolved. A joint stipulation and settlement agreement has been filed for approval by the Secretary of Labor.

DISCUSSION OF ISSUES

Blanch's safety concern was related to a reactor core pressure sensing device referred to as Rosemont transmitter, which transmits data on core pressure to the reactor control room. The transmitter is used extensively in nuclear power plants. Experience has shown that some models may develope defects over time. The problem was known to the Nuclear Regulatory Commission, and it was the subject of a bulletin issued to alert the industry. In cooperation with the Commission, Respondent has made the changes necessary to correct the defect.

Complainant alleges that the Respondent took retaliatory action against him because he complained of the potential safety hazard presented by the defective equipment. He complains that his performance evaluation was adversely affected, and that the Respondent attempted to sever his relationship with companies outside Respondent for which he did subcontracting work. Respondent denies that there was a safety problem, and it denies that it attempted to penalize Complainant for expressing his concerns. Furthermore, the Respondent states that even assuming a valid complaint exists, Complainant's filing for redress was not timely.

The parties recognize that each bears a risk of failure in maintaining the respective claim and defense at trial. Viewed

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from this perspective they have chosen to avoid risk and settle their differences. Both sides stand to benefit: Blanch returns to the status he held before the complaint without questions of the validity of the complaint, or justification for the performance evaluation he seeks, or proprietary of his subcontracting work. Respondent is able to avoid disruption of its operations, save the costs of litigation, and maintain the services of a valued employee. Moreover, both parties are able to avoid protracted and exhausting litigation which is the reality of these disputes.

Given these considerations, and the exchange between the parties, the settlement is fair. Briefly, in return for his dismissal of the complaint with prejudice barring all claims,

Respondent will take the following actions: remove Blanch's 1989 performance evaluation from his personnel file; adjust Blanch's salary for 1989 based on an assumed performance of 4.0 for the year; pay attorney's fees and costs connected with the prosecution of the complaint; and, clear Blanch for subcontracting work outside his work for the Respondent. The details of the agreement, which do not depart from the substance given here, are fully described in the binding documents, the settlement agreement and supplementing stipulation.

A successful prosecution of this suit could hardly return more to Blanch than he achieves by dismissal: the alleged violation has been abated; Blanch has his position with salary adjustment; and, his costs have been paid. The recommendations of the Department of Labor have been accepted and followed. There is nothing remaining to be done in the case.

Considering all of the circumstances, is appears appropriate for the Secretary of Labor to approve the settlement agreement of the parties and dismiss this case with prejudice.

RECOMMENDED DECISION

It is recommended that the Secretary of Labor take the following actions:

A. Incorporate by reference the settlement agreement and stipulation of the parties in any order issued in this case.

B. Enter a final order approving the terms and conditions

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of the incorporated settlement agreement and stipulation of the parties, and dismiss the complaint with prejudice as requested by the Complainant.

GEORGE A. FATH
Administrative Law Judge